

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PETER J. SMITH,)
)
Plaintiff,)
)
v.) CIVIL CASE NO. 2:24-cv-186-ECM
) [WO]
WENDY'S INC.,)
)
Defendant.)

MEMORANDUM OPINION and ORDER

On May 21, 2024, the Magistrate Judge entered a Recommendation that Plaintiff Peter J. Smith's 42 U.S.C. § 1983 action (doc. 1) be dismissed without prejudice because he failed to comply with the Orders of the Court. (Doc. 7). On June 3, 2024, the Plaintiff timely filed objections to the Magistrate Judge's Recommendation. (Doc. 8).

After carefully reviewing the record in this case, the Recommendation of the Magistrate Judge, and the Plaintiff's objections, the Court concludes that the Plaintiff's objections are due to be overruled, the Recommendation of the Magistrate Judge is due to be adopted, and this case is due to be dismissed without prejudice.

When a party objects to a Magistrate Judge's Report and Recommendation, the district court must review the disputed portions *de novo*. 28 U.S.C. § 636(b)(1); *see also* *United States v. Raddatz*, 447 U.S. 667, 674 (1980). The district court "may accept, reject, or modify the recommended disposition; receive further evidence; or resubmit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1). *De novo* review requires that the district court independently consider factual issues based on the record. *Jeffrey S.*

by *Ernest S. v. State Bd. of Educ. of State of Ga.*, 896 F.2d 507, 513 (11th Cir. 1990). However, objections to the Magistrate Judge's Report and Recommendation must be sufficiently specific in order to warrant *de novo* review. See *LoConte v. Dugger*, 847 F.2d 745, 750 (11th Cir. 1988) ("Whenever any party files a timely and specific objection to a finding of fact by a magistrate, the district court has an obligation to conduct a *de novo* review of the record with respect to that factual issue."). Otherwise, a Report and Recommendation is reviewed for clear error.

The Magistrate Judge recommended that this action be dismissed without prejudice because the Plaintiff failed to pay the required filing fee or complete and file the Court's long-form application to proceed *in forma pauperis* by the deadline set by the Court. (Doc. 7). In his objections, the Plaintiff states that the amount in question exceeds \$20.00, he has requested a jury trial, and he has alleged violations of his civil rights. (Doc. 8). These objections, however, fail to show that the Magistrate Judge erred in concluding that the Plaintiff failed to comply with the Court's Orders, or in recommending dismissal of this case without prejudice. Consequently, the Plaintiff's objections are due to be overruled.

Accordingly, upon an independent review of the record, and for good cause, it is ORDERED as follows:

1. The Plaintiff's objections (doc. 8) are OVERRULED;
2. The Recommendation of the Magistrate Judge (doc. 7) is ADOPTED;
3. This case is DISMISSED without prejudice.

A separate Final Judgment will be entered.

DONE this 2nd day of July, 2024.

/s/ Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE